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# TISCO WORKING PAPER SERIES ON CIVIL LAW AND CONFLICT RESOLUTION SYSTEMS

## **Best Practices for an Affordable and Sustainable Dispute System: A Toolbox for Microjustice**

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**Maurits Barendrecht**

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Toolbox for Microjustice**

**Abstract**

*Many people lack access to justice for urgent legal needs, although the value of protection of their rights is high. Can justice be affordable for people with less than 2\$ a day to spend?*

*Access to justice studies usually investigate the barriers to justice and suggest ways to remove them. This paper follows an alternative approach. Justice is seen as a set of goods that must be produced and delivered by people to other people. For access to justice to become available, five key dispute resolution tasks should be facilitated by services performed at costs that are affordable to users. The paper collects best practices that can be derived from the disciplines that study disputes. It sketches how they may be combined in a low cost dispute system ran by a "Microjustice Facilitator". The conclusion is that these five essential services are not inherently costly to produce for people with limited resources, although there are still many gaps in our knowledge about providing them efficiently, which calls for coordinated innovation processes. It is also likely that the transaction costs associated to delivering justice are part of the problem and the market for justice should be studied more thoroughly.*

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## I. Introduction

### A. Access to Justice

Access to justice is a problem in almost every jurisdiction. According to a recent report by the UN Commission on Legal Empowerment of the Poor, around four billion people are excluded from the formal legal system. In many developing countries, 25% of the population is not even registered as an individual, so access to education, health care, pensions, or participation in the market economy is problematic. As much as 70% of residential property in cities and in the countryside is not formalized, so it is less well protected against claims of outsiders, cannot be sold easily, or be used as collateral for a loan (Commission on Legal Empowerment of the Poor 2008). As to dispute resolution through courts and lawyers, the global picture is that the costs of access to these services are too high for all but a small proportion of rich individuals and businesses, unless governments or other donors step in to subsidize legal services and courts heavily (Rhode 2004; Commission on Legal Empowerment of the Poor 2008). Distance, legal costs, language problems, delay, and bureaucratic procedures, are among the most common barriers to justice (Commission on Legal Empowerment of the Poor 2008).

As a result, many people, particularly the poor, see their personal security being threatened. Insecure property rights mean that they live in fear of eviction and expropriation. When a head of family dies, this throws into question who has the right to live in the family home and who can farm the land. ‘Malign dependency is a high risk’ for women, tenants, employees, and partners in small businesses, because they tend to invest more in relationships than their counterparts, and thus have more to lose from leaving the relationship (Commission on Legal Empowerment of the Poor 2008).

The value of access to justice for citizens is thus generally recognized. According to one leading researcher on the relationship between governance and economic development, an improvement in the rule of law from relatively poor to merely average performance would result in an estimated fourfold increase in per capita incomes, a reduction in infant mortality of a similar magnitude, and significant gains in literacy (Kaufmann 2003; Kaufmann, Kraay et al. 2008). As to the elements of the rule of law that cause these effects, the role of democracy remains contested, whereas much evidence has been

found that suggests a substantial contribution of the protection of property rights to economic growth (Buscaglia and Stephan 2005; Haggard, MacIntyre et al. 2008). The UN Commission on Legal Empowerment of the Poor, which consisted of former heads of state, cabinet ministers, leading jurists and economists from the North, South, West, and East summarized the state of the art by stating that if the law works for everyone it defines and enforces the rights and obligations of all, which allows people to interact in an atmosphere that is certain and predictable (...) It creates an environment in which the full spectrum of human creativity can flourish and prosperity can be built (Commission on Legal Empowerment of the Poor 2008).

### *B. Access to Dispute Systems*

In this paper, we will concentrate on the needs for protection in disputes. Socio-legal research has rendered a rather precise picture of the most important types of conflicts that individuals experience (see Barendrecht, Kamminga et al. 2008 for a literature review). According to legal needs surveys, personal security in relation to outsiders and government (human rights protection) presents the most urgent category of problems. After this comes the core business of any dispute system: property conflicts and issues related to land and housing, problems between employer and employee, family problems, neighbor issues, and business conflicts. These disputes are typically relational in nature. They take place within the relationships in which people invest most, which also creates dependence. Here, dispute systems are more or less inevitable, because long term relationships have to cope with change in unexpected directions (Barendrecht 2008).

Then there are the less urgent (but more frequent) consumer problems, debt collection issues, and problems related to access to essential government services. Here the focus is more on enforcement of rights and obligations that are defined beforehand (Barendrecht 2008).

In a dispute there is at least one person who wants a change in the status quo, a person who wants access to justice. This plaintiff wants to achieve something in relation to at least one other person, the defendant. The dispute system is the setting he has access to for seeking a solution to the dispute. Dispute systems may consist of formal elements such as courts or other neutrals, legal procedures, and legal services. Informal systems may include alternative dispute resolution (ADR) services such as mediation, but also supervision by people in a more or less hierarchical position (bosses, parents, teachers, clerics, village elders) and procedures before a tribunal appointed within a community.

### *C. The Costs of Producing Justice and Transaction Costs*

If the value of a good is high, but it is not supplied in sufficient quantities to meet demand, that is surprising. The only explanation for this that economic theory allows is that the costs associated to delivery of the good—the sum of the production costs and the transactions costs of delivery—must be too high. If these costs would be lower, legal service providers would see a business in delivering access to justice, and the market would solve the problem.

So, what do we know about the production costs and transaction costs of a legal system? The production costs can be the costs of creating rules, the costs of delivering legal services, or the costs of decision making by a court. Transaction costs include the costs of travelling to courts, the costs of contracting between legal service providers and their clients. They also encompass the costs of regulation of the legal profession, costs of monitoring courts, or other costs that are necessary to cope with what is often called market failure. An example of market failure is that clients have less information than lawyers (information asymmetry) so they may be exploited by them, which is one of the classical reasons for regulating lawyers (Stephen and Love 1999; Baarsma, Felsö et al. 2008) .

This paper is about the costs of producing justice in disputes. It focuses on the five most essential elements of a dispute system from the perspective of its users, and then explores whether these elements are inherently costly to deliver. Is justice indeed a luxury? Or are there best practices that make it possible to deliver justice to people living on less than 2\$ a day? A companion paper (Barendrecht 2009) builds on this analysis, and investigates the transaction costs associated with making the legal system work, and in particular which market failures and government failures complicate delivery.

#### *D. Bottom-Up Approaches to Access to Justice and Microjustice*

This paper thus deviates from the usual approaches to the problem of access to justice in which the barriers to access are identified and remedies subsequently discussed. The literature tends to distinguish five waves of access to justice reforms, and focuses on supplying legal aid, public interest litigation, alternative dispute resolution, opening up the market for legal services, and better regulation of the legal profession (Cappeletti and Garth 1978; Parker 1999). The problem with this line of thought is that it is oriented towards the supply side; it either takes the legal system for granted or proposes changes in that system without a thorough analysis of the users' needs. High costs of lawyers, for instance, or problems with understanding legislation are seen as barriers to access, and remedies are then sought in the direction of subsidized legal aid, pro bono legal services, or educating people about their rights. It may be, however, that legal services or courts are not the lowest cost solutions to the problem, and that laws do not address the most urgent problems of our legal system's users.

A demand side approach becomes increasingly fashionable in the area of law and development. Although spending by donors is still mostly on the formal system of courts, lawyers, and police (Jensen 2002; Carothers 2006; Wojkowska 2006), the possibilities of improving justice from the bottom up are attracting increasing attention. Bottom up strategies depart from the realities, and often try to improve informal ways of getting to just outcomes of disputes (Buscaglia and Stephan 2005). Examples of these approaches are the legal empowerment approach (Golub 2003), the para-legal programs ran by donors such as Open Society and World Bank, numerous community justice projects ran by local NGO's, and the many attempts to incorporate informal justice systems in the formal system (Barron, Diprose et al. 2007; Byrne, Mirescu et al. 2007; Hammergren 2007; Van Rooij 2007; Commission on Legal Empowerment of the Poor 2008; Lundy and McGovern 2008).

Several reasons contribute to this shift towards bottom up approaches, and warrant a thorough analysis. First, top down legal reforms have proven less successful than hoped for. Investments in courts, prosecutors, bar associations, and western style codification do not trickle down where the poor majority can attain access to justice (Carothers 2006). Moreover, a formal (top-down) legal system seems to be a costly governance structure. In a situation of scarce resources, clients, governments, donors, and other interested parties should concentrate their efforts on the most effective policies. Finally, there is an increasing feeling that formal legal systems do not always adequately address the problems of individual citizens (Buscaglia and Stephan 2005). Commentators noted that they are formal indeed, sometimes outright bureaucratic, unnecessarily complex, and adversarial, and therefore putt extra stress on already tense relationships ((Hadfield 2000). Their productivity in numbers of sustainable solutions per dollar and hour invested tends to be low. Thus, informal justice and alternative dispute resolution (ADR) have become central elements in policies for increasing the performance of legal systems all over the world (Wojkowska 2006). However, it is still questionable whether these policies are indeed the answer. Worries about informal justice and ADR include a low number of cases processed, a tendency to become more formal and legalistic over time, and inadequate protection of less powerful parties (Welsh 2001; Bingham 2008). There is mounting evidence that ADR cannot function properly without the context of a formal legal system (Hernandez-Crespo 2008).

This uncertainty regarding what an efficient legal system should look like is becoming an impediment to effective rule of law policies in itself, as well as an obstacle to academic analysis of access to justice policies. If the vision of the system's goals is unclear, it becomes hard to measure progress, select promising projects, and establish the reasons why access to justice is not delivered. Efforts to improve access to justice need focus—focus on the most urgent legal needs, the most effective interventions, and the most relevant know how.

Thus, this paper is organized around the essential tasks of a legal system, seen from the perspective of a person with limited resources who seeks access to justice. Departing from his legal needs, we look for the most effective interventions. Interventions can only help, though, if they are both affordable for the clients *and* sustainable to deliver for the suppliers, whether these are private legal services providers or government officials.

Usually, the delivery of justice is more affordable and sustainable if it takes place at the local level, for example, by people in the same village or in the same part of the city. As we will see, most legal needs arise in local relationships, and local delivery of justice is usually less costly. The challenge therefore becomes how to organize delivery of justice through self-help and local labor, supported by the necessary elements of a formal legal system and modern technologies. This is what we have called the challenge to find microjustice (Barendrecht and Van Nispen 2008), because it is a similar challenge as the one to develop microcredit, micro-insurance, or micro-health-services.

### *E. What follows*

Section II explains a model of five essential dispute resolution tasks, based on a review of the interdisciplinary literature regarding dispute systems (Barendrecht 2008). This model links knowledge about dispute systems from disciplines such as negotiation theory, conflict studies, microeconomics, institutional economics, and (comparative) legal research. This knowledge is now increasingly integrated in a new research area called dispute system design.

Section III investigates best practices for facilitating these five dispute resolution tasks. These best practices are derived from the same literatures. The aim is to explore whether the corresponding services can be delivered in a low cost manner. Although the overview of best practices is preliminary, it strongly suggests each of the five tasks can be facilitated in a way that is affordable for the user of the dispute system and sustainable for the providers. Some services can be delivered on a person to person basis by local labor, other services can be produced 'wholesale' by looking for economies of scale. However, the investigation also shows that in some particular types of conflicts add-ons will be necessary, and are likely to be more costly.

In Section IV, an outline is given of the way the best practices may be linked together. I draw the picture of a "Microjustice Facilitator" who runs a sustainable business that supports the five essential dispute resolution tasks for people with limited resources. Section V concludes and explores the implications. Under which conditions affordable and sustainable (microjustice) dispute services may emerge, remains to be seen. Delivering justice is not only a matter of low cost production, but also of dealing with the transaction costs of delivery. These will be discussed in a companion paper (Barendrecht 2009).

## **II. Best Practices for Facilitating Core Tasks of a Dispute System**

There is an emerging field of dispute system design (Ury, Brett et al. 1988; Costantino and Sickles Merchant 1996; Shariff 2003; Bingham 2008; Bordone 2008). This literature has identified some useful steps for a design process (diagnosis, design, implementation, evaluation) and singled out possible evaluation criteria for dispute systems (Bordone 2008; Gramatikov, Barendrecht et al. 2008; Hadfield 2008). It also delivered building blocks of dispute systems that are likely to perform well. Recommendations include that

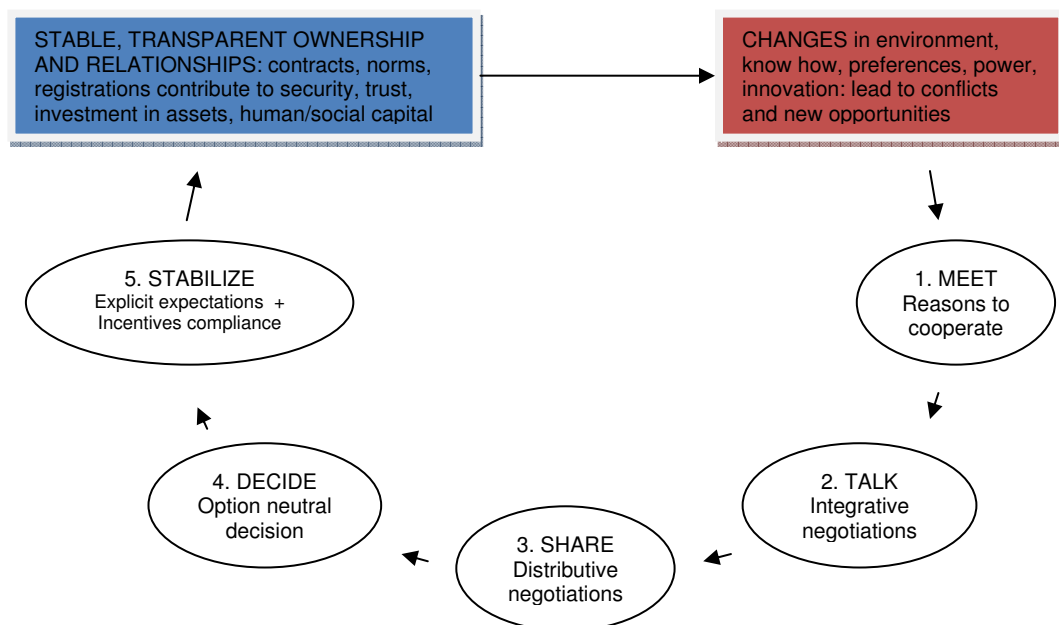
they should be interest-based, with loop-backs to negotiation (Ury, Brett et al. 1988), inclusive (as to people and issues involved), allow for centralized information processing, delegate sub-processes efficiently, and vest control in the people most affected by decisions (Shariff 2003).

From this literature, and from the practice of dispute systems, a basic model of a dispute system can be derived. This model (see figure 1 and table 1) contains the necessary and sufficient elements of a dispute system (Barendrecht 2008). For each of these elements, there are basic technologies for delivery.

Task	Description	Basic technology
1. <i>Meet</i>	Centralized forum for information processing	Make costs and benefits of participation for defendant higher than costs and benefits of fighting, appropriation, or avoiding
2. <i>Talk</i>	Communication and negotiation	Support integrative negotiation (interest based)
3. <i>Share</i>	Distributing value fairly	Supply information about fair shares (sharing rules, objective criteria)
4. <i>Decide</i>	Decision making procedure	Make option of a neutral decision available (at low cost)
5. <i>Stabilize</i>	Transparency and compliance	Supply tools to make arrangements explicit; Make costs and benefits of compliance higher than those of non-compliance

Table 1 Necessary and Sufficient Elements of a Dispute System with Basic Technologies for Delivery

These five tasks, carried out by the disputants with help of dispute resolution services, form the necessary and sufficient elements of a dispute system. The five elements interact and reinforce each other. For instance, there are strong complementarities between judging (element 4, the option of invoking a neutral decision) on the one hand, and distributive negotiation on the other (element 3).



The threat of a neutral decision positively influences the bargaining process, but these incentives are diluted in case of high costs of neutral decision making. Neutral decision making can build on communication between the parties and fill in the gaps in their negotiated agreement. Another complementarity is that the expectation of a fair process and a fair outcome increase the attractiveness of starting a dispute resolution process



(element 1, meeting). Decisions that result from a fair process and reflect outcome fairness are also more likely to be complied to (element 5, Stabilize).

Some other elements of a dispute system are useful add-ons for particular types of disputes. Extensive fact-finding may be necessary in cases of fraud, or accidents. Legal representation is indispensable for the accused of severe crimes. Appeals, and formal written elements of procedures may be necessary safeguards. But they are not indispensable elements of every dispute system, and many dispute systems exist that function without them.

The assistance a system offers to the disputants for each of these five elementary tasks can be seen as goods (services). The tasks (meet, talk, share, decide, and stabilize) can be facilitated making use of the basic technologies. For each of these tasks, this can be done in many different ways. Among these practices, some are less costly than others. Exploring the best practices can give us a sense of the possibilities of producing these goods and services at a cost that is affordable for the users.

### *A. Meet: Reasons to Attempt Cooperative Resolution*

Coping with conflict cooperatively requires interaction between the parties. Some form of centralized information processing is necessary (Shariff 2003). The parties require a meeting place or communication channel where both are present and willing to communicate about the conflict.

For both of them, the net benefits and costs of meeting must be higher than the net benefits and costs of non-cooperative strategies, such as fighting, or avoiding. This is the basic technology for providing this first element of a dispute system (Barendrecht 2008).

How can this meeting place be delivered in a low cost manner? Most differences of opinion and issues that require discussion are resolved because the parties meet and talk by themselves. A meeting place can usually be organized inexpensively if plaintiff and defendant are already in a long term relationship. Issues within a family, employment disputes, neighborhood disputes, and property issues about land or housing can usually be dealt with close to where the disputants live or work.

On line structures for resolving disputes can be helpful if the parties live far apart. Additionally, this may solve the problem that both parties are not available at the same time. But they raise the costs for the clients, because written communication consumes more time, and may lead to misunderstanding.

Making a low cost meeting place available, is not sufficient. Whether the defendant will go to a meeting place depends on his internal motivation and his external motivation (incentives). Factors that will influence this are attitudes (pro-social or egotistic), emotional state (anger, shame, guilt), social norms, reputational concerns, the costs of meeting, and the possibility of a default judgment against him. For instance, social norms play an important role in directing disputants to a neutral mediator in China, Japan, Korea, and Turkey, whereas this is much less so in the United States (Wall, Stark et al. 2001). If such social norms are not existing, third parties may have to use pre-mediation skills to convince the parties to participate in the process, which adds to the costs. Reputational concerns can also be important reasons for meeting, for instance in consumer disputes with sellers of goods and services as defendants.

Fighting – that is use of power – to deal with conflict, may be attractive for those who expect big gains from this strategy. Thus, a dispute system must reduce the net pay-off from fighting. One way to achieve this is through an enforceable prohibition of the use of violence. Another approach is to increase the expected gains from cooperation, which will happen in a stable environment, where normal participation in the economy is less

risky and more rewarding for all but a few (Hirshleifer 2000; Hirshleifer 2001; Garfinkel and Skaperdas 2007).

Avoiding is an attractive strategy for those who expect big losses from cooperation. If defendants expect to undergo severe punishment in a dispute system, the system must contain sufficient incentives to compensate for this. It might even need some kind of forced cooperation, where the defendant is physically brought to court. This will be costly to organize; severe domestic violence and war crimes may fall in this category. In personal injury matters, or in case of big claims between large companies, the defendant may expect to pay large sums of money. A similar situation can occur in land disputes, where the defendant may assume that cooperation means that he must cede control over the land, wholly or partially. For such situations, a dispute system must provide strong incentives to participate in the process, which may again be costly.

One option commonly used in legal procedures is the one of a default judgment. If the defendant does not appear in court, the court will follow the plaintiff in his claim and render judgment against the defendant—if the claim is reasonably supported by available facts and evidence and is legally sufficient, see for instance Article 15 Principles of Transnational Civil Procedure (ALI and UNIDROIT 2004). Whether this provides sufficient incentives to appear in court is also a matter of the likelihood that the decision can be enforced against the plaintiff.

A less costly option is that punishments are forfeited in exchange for a contribution to finding out the truth and rendering a healing process. Dispute systems delivering transitional justice often have this form. Participation in the process is stimulated by granting the defendants immunity from certain sanctions, as long as they cooperate (Schneider 2008). Similar arrangements for crimes can often be found in customary law in developing countries.

### *B. Talk: Supporting Integrative Negotiation*

Negotiation is most often the way to solve conflicts. The basic technology of integrative negotiations is essential for this dispute resolution task. It consists of the following process (Walton and McKersie 1965; Fisher, Ury et al. 1991; Lewicki, Saunders et al. 2006):

- (1) review and adjust relational conditions to create an environment that promotes communication and information-sharing;
- (2) review and adjust perceptions;
- (3) focus on interests: the needs, wishes and fears of the disputants;
- (4) take a joint problem-solving approach to the dispute;
- (5) be creative in developing a number of solutions;
- (6) and choose a (win-win) solution that best fits the interests of both parties.

There is much research regarding the circumstances that enable integrative negotiations, and this is made accessible for practitioners (Moffitt, Bordone et al. 2005; Deutsch, Coleman et al. 2006; Oetzel and Ting-Toomey 2006). For instance, it helps if parties can communicate openly about their interests, and explore many possible win-win solutions. When disputants feel they are treated with procedural justice they are more likely to reach integrative solutions (Hollander-Blumoff and Tyler 2008). Emotions and the interaction between the parties may or may not be productive in this respect, and must be somehow managed (Allred 2005). Coping skills can be important as well, because many disputes involve a loss. Victims of crime and of personal injury are obvious examples of plaintiffs who must cope with a new reality, but a divorce, the loss of a job, or a badly performed service can be difficult to live with as well.

On the basis of this research, dispute resolution professionals have developed best practices to implement integrative negotiation. They have found methods for dealing with the different phases of the communication and negotiation process, as well as the most

common disruptions (Moore 2003). During the last decades 'technical progress' in this area has been fast. Once the parties sit down and are prepared to talk, modern conflict management techniques can improve the situation as experienced by the parties in most conflicts. Cognitive biases and irrational behavior can be combated by a variety of questioning (Fairfield and Allred 2007) and communication methods, such as reframing (Gray 2005). These methods help the parties define more precisely what they need, want, or fear, and to maximize utility within the scope of what is feasible and possible for these particular parties.

Mediation, which uses these methods, is typically successful in about 60 to 70% of the cases in which this intervention is tried (Wall, Stark et al. 2001). Both contextual mediation strategies, where a mediator manages the process, and substantive strategies that deal directly with the issues, have been found effective (Martinez-Pecino, Munduate et al. 2008). Improving the relationship is another successful technique (Wall, Stark et al. 2001). Working towards mutual recognition of interests and persons is often recommended, as well as empowering the parties to take dispute in their own hands again (Bush and Folger 2005). Recognition may be followed by an apology. Less effective are reflective strategies, where the mediator focuses on building rapport and trust, and approaches where the mediator focuses on the facts, or pushes for settlement (Wall, Stark et al. 2001).

Facilitating negotiations through using these techniques can be done by mediators, but also by the parties themselves (Fisher, Ury et al. 1991; Ury 1991), by cooperative lawyers (Lande 2005; Lande 2008), or by online dispute resolution facilities (Katsh, Katsh et al. 2001; Braun, Brzostowski et al. 2006; Brett, O'Leary et al. 2007).

The processes that help find workable solutions to conflicts do not need to be costly. Communication and negotiation skills are widely available and useful for other purposes than resolving conflicts. The parties themselves may have them or others in their surroundings. Basic training in negotiation and peer-mediation can be given in a few days. Even sophisticated mediation skills are available for a reasonable price, taking into account that mediation for an average conflict may take not more than two or three sessions of several hours.

### *C. Share: Information about Fair Distribution*

The parties to a conflict usually also have distributive issues to solve. Dividing the pie is difficult, in particular in relationship conflicts, where household tasks, salaries and rents have to be adjusted to changing circumstances, and where assets have to be divided in case of divorce, or termination of a long term contract. Settling distributive issues is difficult in any negotiation, but is especially problematic in disputes, because both parties do not have the alternative of going to another buyer or seller for a similar transaction.

Disputants are likely to resort to tactics that can bring them the biggest slice of the pie, but that also put the negotiation process at risk. They try to be patient, make extreme offers, commit themselves to making no further offers, try to hide information from the other party, and make efforts to develop alternative ways to serve their interests (Muthoo 1999; Muthoo 2000; Carraro, Marchiori et al. 2006; Korobkin and Doherty 2007).

One technology that may help the parties to solve distributive issues is to give them neutral information about a reasonable compromise. A dispute system can assist the parties with objective criteria (Fisher, Ury et al. 1991). Market prices, rules of thumb used in practice, social norms, or case law give people information about the way others dealt with similar problems.

Objective criteria have a similar function in a dispute as information about a market price in a standard economic transaction (Barendrecht and Verdonchot 2008). Information about 'going rates of justice' gives both parties the idea what a fair outcome is, in which

they do not give away too much, and diminishes their fear of regretting the settlement. Descriptive information, that is telling them how others have actually distributed value, is more likely to help than prescriptive information, which tells them how some authority thinks they should settle (Barendrecht and Verdonschot 2008; Verdonschot 2009).

On the basis of the theoretical literature and best practices found in actual dispute systems, Barendrecht and Verdonschot have identified nine properties of objective criteria that make them more useful as tools to settle distributive issues. Preferably, they:

- (1) are independent of willpower and allow for being applied objectively;
- (2) are perceived as legitimate;
- (3) lead to outcomes that are continuous in character, not binary;
- (4) weigh similar elements of the situation on both sides;
- (5) belong to parties, reflecting their ideas about legitimacy and appropriate neutral evaluation criteria;
- (6) do not claim exclusivity over other objective criteria;
- (7) allow decision makers to tailor the outcome to the specific situation;
- (8) are practical, in particular requiring low-cost fact-finding; and
- (9) provide social information about actual application by others.

As to the contents of objective criteria, research on fairness and distributive justice has delivered many useful insights that can be turned into best practices (Konow 2003). Seven theoretical approaches to outcome justice can be distinguished: distributive justice, restorative justice, corrective justice, retributive justice, transformative justice, legal pragmatism, and formal justice (Verdonschot, Barendrecht et al. 2008). Justice research has made quite some progress to establish which type of criteria disputants find appropriate in different settings. Intra-family disputes are often settled on the basis of criteria that refer to need, whereas participants in commercial transactions tend to prefer equity (contribution to gains or losses) as the criterion for distribution (Konow 2003).

Getting this information to disputants, and preferably also to the other people who have an interest in the dispute, is another problem the dispute system must solve. In a formal legal system, normative information is provided by precedents, codes, legislation, law treatises, and databases. Objective criteria that give clear indications of expected outcomes do not frequently occur in these legal sources, though. Lawyers and judges have knowledge about local ways to settle issues, just like the providers of informal dispute systems. For disputants, however, this information may be difficult to obtain. Legal advice can be acquired, but a lawyer will not always give his client a quantitative indication of the expected outcome in money, probability of success, or size of the sanction. Outcomes of concrete disputes can be difficult to predict, because of the many circumstances that influence a court decision. For strategic reasons, the parties will not disclose the legal advice they obtained to their opponent. A neutral opinion about the value of the case may be hard to obtain as well, for more or less the same reasons, although this may help the parties to settle (Dickinson and Hunnicutt 2005).

Thus, information about reasonable sharing of the gains and burdens may be difficult to provide to the clients. The costs of this information are likely to be fairly high for individual disputants. The good news, however, is that these costs can be shared among many users of the legal system. One objective criterion can help thousands of disputants to settle their differences. In this way, dispute systems can reach economies of scale, at least for the most common disputes.

Whether the costs of providing 'the going rates of justice' can be lowered in such a way that this information becomes affordable to the billions of people that presently live outside the scope of the formal legal system remains to be seen, however. Sharing rules, as we might call them, may differ from location to location. Different types of disputes such as divorce, inheritance, and termination of employment need different types of

sharing rules, and each typical dispute may have several issues for which sharing rules are needed.

Still, economies of scale are possible. People living in the same village or the same part of a city, are likely to use similar sharing rules for inheritance, divorce, employment termination, or government appropriation. Across locations and cultures the issues are similar, and the number of possible sharing rules is limited. There are maybe five to ten ways to share property after the father dies, not hundreds. In the information age, collecting this information is a problem that can be solved.

#### *D. Decide: Option of a Neutral Decision*

A decision making procedure is another essential element of a dispute system. A low cost option of addressing a court, arbiter, or other neutral decision maker who can impose a solution, is the basic technology for this.

The threat of a neutral intervention has different effects. It may be a necessary incentive to meet and start talking, and to let defendants make moves towards settlement, in particular if they are better off in the status quo than they expect to be after a fair solution of the dispute. The neutral also supervises the negotiations, because both parties know he can be called in to evaluate their conduct. And the neutral can decide on the outcome, if negotiations continue to fail (bargaining failure).

Costs of accessing the neutral are of the essence. Costs include direct monetary costs, time spent, costs of delay, and costs of stress and the like (Gramatikov 2008). High costs of litigation diminish the fairness of settlements, bring back the tactics that lead to bargaining failure (delaying, extreme offers, commitment, etc.) and decrease the effects of supervision by the neutral. For the suitable price of access to a neutral an often cited criterion is that the sum of decision costs and error costs should be minimized (Tullock 1980; Shavell 2004; Cabrillo and Fitzpatrick 2008)..

The importance of low cost access to a neutral decision maker being established, we can turn to best practices for keeping the costs in check. The literature on legal procedure has stressed this may be achieved through judicial case management techniques and better information processing (Woolf 1996). Simplifying procedures, particularly having one procedure per relationship instead of several procedures for separate issues, is also a recurring recommendation (Cabrillo and Fitzpatrick 2008; Commission on Legal Empowerment of the Poor 2008).

In legal procedures and in arbitration, a usual set-up is a written exchange of documents (pleadings) which explain the issues, sometimes a preparatory hearing in which issues are sorted out, and then some form of main hearing where both parties present their case and the available evidence (Chase and Hershkoff 2007). After this, the neutral decides the vast majority of cases, unless there is need for a more thorough investigation.

Oral presentations by the parties can be a lower cost alternative because assistance of lawyers can make the written form more expensive. Supplying formats for defining interests, distributive issues, relevant facts for distribution, and possible solutions may be helpful as well. They can be made available through the internet, with a helpdesk or more sophisticated legal aid as a back-up.

Another option to cut costs is a preliminary judgment, based on a tentative judicial assessment of the merits of a case or any part of a case (Miller 2008), which enables the parties to settle, to accept the judgment, or to require a more extensive investigation of the merits. Similar effects can be obtained by letting informal neutral decision makers be a first instance, and allowing appeal to a formal judge. This is often how informal justice systems and formal justice systems are integrated in developing countries. Another

variant is so-called evaluative mediation, where the mediator acts as a kind of decision maker in first instance, and the court decision can be seen as an appeal. The basic idea is that a sophisticated design and interplay between the levels of decision-making and appeal can be used to minimize error costs and decision costs (Barendrecht, Bolt et al. 2006).

Expecting from the parties that they behave cooperatively in finding a solution, or in helping the court to find a solution, is likely to influence their motivation (Steinel and De Dreu 2004). This can be done through instructions, through using language that suggests cooperation (“partners” instead of “opponents”), or through rewards (De Dreu, Weingart et al. 2000). Motivating people to work on the problem, by making them responsible and accountable, and by stimulating self-reflection as well as perspective taking, also contributes. Procedural justice research stresses that disputants value voice and participation in the process, trustworthiness, neutrality, and interpersonal respect (Tyler 1988; Tyler 1997).

Courts all over the world are also trying to settle cases in (or close to) the court room, suggesting that the negotiation and the neutral decision making process should be integrated, and loop backs should be provided (Ury, Brett et al. 1988). Combinations of arbitration and mediation like Med-Arb, or Arb-Med, are proposed (Ross and Conlon 2000). Research strongly suggests that mild time pressure on the disputants is essential for reaching outcomes, but conciliation in the court room is criticized for putting too much stress on the parties and being less effective (Harinck and De Dreu 2004; Trinder and Kellett 2007). Practices used in mediation, but also in German civil procedure, where the parties gradually move towards an outcome in a series of meetings may be a solution, but obviously add somewhat to the costs (Chase and Hershkoff 2007). Sensible limitations on the investments of the parties in fact-finding are also an essential way to save costs.

Best practices for optimizing the interaction between the settlement activities of the parties and third party interventions are in the making. Lower court judges in family courts and employment courts seem to be able to handle yearly caseloads of several thousand disputes, because information processing is standardized, up to 80 or 90% is settled under their supervision, the remainder is dealt with in hearings of an hour or less, and the decisions are standardized to a large extent. Average variable costs of the third party intervention are then limited to one or a few hours of work for a professional, with a mark up for overhead.

### *E. Stabilize: Tools to Create Transparency and Compliance*

Outcomes, either obtained by agreement or by a neutral decision, will become part of the future relationship of the disputants. Two basic technologies support this: (1) making the arrangements explicit, so that the parties know what to expect from each other, and taking care that the net benefits for the defendant (and the plaintiff) of complying with the outcome are higher than the net benefits of non-compliance.

A low cost practice to make the outcome transparent is public explanation in the presence of interested third parties. Written individual settlement agreements, contracts, or judgments from a neutral decision maker can do the transparency job in a better way, but they may be costly to write. Best practices for low cost written transparency include standard formats for negotiating issues in an integrative manner, for defining issues and point of views, and for making explicit settlements and decisions. These formats may be linked to each other. One dispute document to be amended by the parties, their advisers, and if necessary by the neutral, may provide a structure for the whole dispute resolution process from initial diagnosis to final decision.

Like other best practices discussed in this paper, these methods make use of economies of scale. This effect is enhanced if the focus is on the most important and frequent

disputes people experience. Divorce, termination of employment agreements, inheritance disputes, or personal injury have recurring issues, recurring criteria, and recurring solutions, so that these processes can be standardized to some extent..

Best practices for ensuring compliance all depend on the general technology of making the net benefits of compliance bigger than the net benefits of non-compliance. Generally, enforcement is more likely if the disputants participated in the process of finding the solution and if they consider the procedure more fair (Hollander-Blumoff and Tyler 2008).

The formal legal system usually provides for sanctions, such as forced sale of assets, bankruptcy proceedings, fines, as well as prison sentences. These sanctions are costly to apply. In an ideal situation, the threat of these sanctions is sufficient to induce compliance, so that they rarely have to be applied. In a situation of relative lawlessness, however, the compliance rate may be so low that many costly sanctions should be imposed to make threats of enforcement credible.

Formal sanctions are by no means the only way to induce compliance. The psychological literature on compliance suggests many other mechanisms: reciprocation, the human tendency to be consistent in their acts, imitation of what others do, positive reinforcement, identification, and authority (Cialdini and Goldstein 2004). Reciprocity is a compliance mechanism that is likely to work in ongoing relationships and in close communities, and economists have built a substantial literature regarding self-enforcing contracts (Fehr and Schmidt 2002). These informal incentives and methods of motivating people to comply with their obligations may be far less costly.

For property rights, businesses, and arrangements between members of a family some form of public acknowledgement of the situation can be effective as well. Registrations perform this function, but are expensive to set up and run because they have strong networking effects (Deininger 2003; Fitzpatrick 2005). Only if most transactions are registered do they give a reliable picture of the rights in question. The costs of registering, therefore, will often not outweigh the benefits for the users of the system.

### **III. Linking Best Practices**

The best practices for delivering low cost dispute resolution services that we found are summarized in Table 2. The next question is whether and how they can be linked together in a dispute system. As we have seen, there are strong complementarities between the five tasks, and the services facilitating these tasks. In the practice of dispute resolution services this translates into business models that combine the tasks and let them be performed by one service provider. Mediators primarily facilitate integrative negotiation (task 2), but may also let the parties think about objective criteria (task 3), and in evaluative mediation they will even advise them to settle in a certain way (task 4). A judge decides (task 4), but also stimulates the parties to settle through negotiations (tasks 2 and 3) and contributes to enforcement by using his authority (task 5).

To see how the five services can be performed more effectively, it is interesting to investigate whether all of them might be integrated in one business model, using the low cost best practices for all the tasks. In the following I will sketch the services of a Microjustice Facilitator, in order to illustrate how dispute systems may be able to build on the available best practices to become more affordable for people with limited resources and sustainable to deliver. Imagining how such a facilitator might organize his business, is a good way to investigate the critical joints and fixtures in a dispute system, and to establish where innovation is most needed.

The name and the context are just examples, however. The same integration of tasks and best practices could take place to develop new models for mediation services, for arbitration, for services of judges, or for lawyers exploring new forms of cooperation (Lande 2005).

Tasks	Basic technology	Low cost best practices	Situations with need for additional services
1. Meet	Make costs and benefits of participation for defendant higher than costs and benefits of fighting, appropriation, or avoiding	<ul style="list-style-type: none"> <li>- Local meeting places</li> <li>- Pre-mediation skills</li> <li>- Social norms to solve conflicts cooperatively</li> <li>- Enhance incentives that link to reputation of defendants to solve conflicts cooperatively</li> <li>- Option of default judgment</li> </ul>	<p>Big distance between disputants:</p> <ul style="list-style-type: none"> <li>- On line meeting places</li> </ul> <p>Severe crimes, or defendants expect having to make big concessions:</p> <ul style="list-style-type: none"> <li>- Forced cooperation</li> <li>- Immunity from punishment/sanction in exchange for participation</li> </ul>
2. Talk	Support integrative negotiation (interest based)	<ul style="list-style-type: none"> <li>- Communication, active listening, questioning techniques</li> <li>- Reframing and adjusting perceptions</li> <li>- Managing emotions and interaction</li> <li>- Improving relationship, recognition, apology, supply of coping skills</li> <li>- Standard format integrative negotiations (identify interests, issues, explore win-win solutions)</li> </ul>	Intractable conflict
3. Share	Supply information about fair shares (sharing rules, objective criteria)	<ul style="list-style-type: none"> <li>- Supply objective norms and criteria for three/five most common issues in most common disputes that:</li> <li>- can be applied easily;</li> <li>- weigh similar elements for both;</li> <li>- give a continuous range of outcomes, not binary answers (yes/no);</li> <li>- belong to the parties (legitimacy, fairness, appropriateness);</li> <li>- allow for adjustment to situation:</li> <li>- are not exclusive;</li> <li>- show what others did in similar situations;</li> <li>- Make this information widely available through internet or other means</li> </ul>	<p>Exceptional (non-standard) disputes or disputes for which criteria are not yet available</p> <ul style="list-style-type: none"> <li>- Processes that lead to precedents</li> <li>- Other processes to develop criteria</li> </ul>
4. Decide	Make option of a neutral decision available (at low cost)	<ul style="list-style-type: none"> <li>- Simple procedure (oral presentation, hearing, decision)</li> <li>- Judicial/neutral case-management and information processing</li> <li>- Online formats for defining interests, distributive issues, possible solutions, decisions</li> <li>- Stimulate cooperative attitude</li> <li>- Procedural justice: voice, participation, trustworthiness, neutrality, interpersonal respect.</li> <li>- Discussion of possible objective criteria for outcome</li> <li>- Integration of decision making and settlement</li> <li>- Mild time pressure</li> <li>- Preliminary judgments in more difficult cases</li> <li>- More generally: minimize sum of decision costs and error costs</li> </ul>	<p>Fraud, contested crimes, severe crimes, and other situations where facts essential for distributing gains, losses, and sanctions remain disputed:</p> <ul style="list-style-type: none"> <li>- Extensive fact-finding.</li> </ul>
5. Stabilize	Supply tools to make arrangements explicit; Make costs and benefits of compliance higher than those of non-compliance	<ul style="list-style-type: none"> <li>- Standard online negotiating, settlement, and decision documents for most common disputes and issues;</li> <li>- Informal compliance mechanisms (reputation, reciprocity, identification, authority)</li> <li>- Registrations (may be costly)</li> </ul>	<p>Situations where informal compliance mechanisms are insufficient:</p> <ul style="list-style-type: none"> <li>- Formal sanctions, forced sale of assets;</li> </ul>

Table 2 Some Low Cost Best Practices for Facilitating Five Dispute System Tasks

### A. The Microjustice Facilitator

Inspired by the other microservices such as microcredit, micro-insurance and micro-healthcare, it may be possible to develop new dispute resolution services in developing countries, where many people are not reached by the official justice system. Justice might be delivered locally, by people from the community to their peers, but supported by first-world technology (Barendrecht and Van Nispen 2008). Like communities always



have had money lenders, they also have informal dispute resolution providers: village elders, people's courts, or informal mediators. And like has been the case with money lenders, their dispute services vary in quality and in price, making them not accessible for everyone. Microcredit reinvented the profession of the money lender, by taking apart the tasks of lending, funding, monitoring, and securing payment and finding low cost best practices for each of them. A similar innovation process is possible for services that aim to help people with solving their disputes.<sup>1</sup>

The Microjustice Facilitator may be a person who already delivers dispute resolution services, and wants to make them more accessible to the poor. He could be a community leader, a priest or imam, or a lower court judge who has a vast area with many potential disputants to take care of, lacking the funds to serve all of them well.

Or she could be someone starting her own dispute resolution practice, offering legal aid and mediation in a novel way. And maybe the services could be part of other microservices, aiming specifically on the linkages between property rights problems and credit, or helping to deal with the family problems that are important for the clients of maternity care. In developed countries he could be an entrepreneurial mediator or a student from a legal aid clinic, someone working at a company selling insurance for legal expenses, or a commission dealing with consumer complaints.

The Microjustice Facilitator would make use of the best practices for delivering low cost access set out in a preliminary way in Table 2. Using his local knowledge, he would certainly first investigate which unmet legal needs are most prevalent in his community. He would focus on a limited number of the most urgent problems. Maybe he would choose from the major crisis in relationships: divorce like situations and associated domestic violence, inheritance issues and the ensuing property rights conflicts, termination and major changes in long term employment and business relationships, termination/major change of long term land use arrangements, and maybe conflict between neighbors. Or he would specialize in solving problems in one time transactions: complaints by customers against suppliers of goods and services, and by citizens against governments agents from which they need cooperation.

### *B. Integrated Dispute Services*

In order to perform her services, the facilitator would be supported by state of the art technology and infrastructure. This could mean she has a toolbox (see Table 3 for an example of its possible contents) with questions and formats for uncovering the perceptions of both parties of the problem, associated communication problems, interests, distributive issues, possible solutions, ways of making outcomes transparent, and ways to induce compliance. With this toolbox, she can help the parties process information centrally, during the five different stages of the dispute resolution process (meeting, communication and negotiation, sharing, deciding, stabilizing).

Moreover, the facilitator and his clients have access to the sharing rules that are applied to the three to five most common issues in each of the standard disputes in which he specializes. These objective criteria are collected by him, and possibly by colleagues or other parties interested in supplying objective information about fair and just outcomes.

The start of the process would be an intake, in which the client explores the problem, if necessary with help of the facilitator. The intake is guided by the toolbox. A simple version of this intake and diagnosis process can even be supplied online, if this is practicable and the lower cost solution. This initial map of the problem and the tasks that have to be performed will be enriched and improved in the course of the process.

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<sup>1</sup> The Microjustice Initiative ([www.microjustice.org](http://www.microjustice.org)) is committed to facilitate this process.

With this map of the problem, and some advice on how to communicate and negotiate, the client may try to contact the other party again. For this service, the client pays a small fee.

A next level of service would entail the Microjustice Facilitator trying to solve the “meeting problem” if the client does not succeed in reaching a decision by himself. Using pre-mediation skills, he would try to engage the other party and invite him to participate.

<b>Possible Microjustice Facilitator Toolbox</b>	
Self help tools for client (with possible assistance) <ul style="list-style-type: none"> <li>- Diagnosis</li> <li>- Suggestions how to communicate</li> <li>- And negotiate with other party</li> </ul>	Tools for contacting and engaging other party: <ul style="list-style-type: none"> <li>- Explaining guarantees neutral perspective</li> <li>- Process if other party participates</li> <li>- Process if other party does not participate</li> </ul>
Questions and formats for uncovering and making transparent: <ul style="list-style-type: none"> <li>- Problem as experienced by client</li> <li>- Problem as experienced by other party</li> <li>- Communication barriers</li> <li>- Interests of each of the parties</li> <li>- Possible solutions</li> <li>- Distributive issues</li> <li>- Outcomes</li> <li>- Ways to induce compliance</li> </ul> One document processes information for all tasks	Objective criteria (descriptive norms): <ul style="list-style-type: none"> <li>- Used locally</li> <li>- And possibly in similar communities</li> <li>- For standard problems which are focus</li> <li>- For each problem 3/5 most important issues</li> </ul>
Tools to create a forum for decision making if no agreement: <ul style="list-style-type: none"> <li>- Panel formed depending on stakes, level of trust, complexity, expectations enforceability</li> <li>- Decision on basis of information organized in document</li> <li>- Plus information from hearing</li> </ul>	Tools to stimulate compliance: <ul style="list-style-type: none"> <li>- Gradually and gently increasing transparency of non-compliance</li> <li>- Building on best practices</li> </ul>

The facilitator would also make clear that the process will continue until a satisfactory solution has been found, also if the defendant does not participate. This may be a highly controversial element of the dispute system, but if such a ‘solution by default’ process would not be available, many attempts to solve disputes would fail in the initial meeting phase. Best practices from legal systems suggest that such a default-mechanism is necessary in many cases (see Section III.A).

The precise design of default mechanism is one of the issues for further innovation of dispute systems. Judgments by defaults in legal dispute resolutions systems tend to be harsh: the plaintiff gets what he asks for, with a limited check by the court of the reasonableness of his claim. It may be possible to develop safeguards for the defendant that the case will be decided neutrally, considering his interests as well, even if he does not participate. On the one hand, this will help to build trust in the system and the neutral role of the facilitator. On the other hand the motivation for the defendant to participate must be triggered, and the mere risk that his views will be taken into account in an uncontrolled way may be insufficient as an incentive.

If the parties are willing to meet, the facilitator leads them through the next tasks of talking and sharing. He tackles communication problems and facilitates integrative negotiations, probably using the basic techniques of a mediator. With respect to the distributive aspects, the parties are assisted by the facilitator to define the issues that

have to be decided. If the parties cannot agree on these, she asks them to consider the objective criteria that have been made available, and think about other possible criteria that could be applicable.

The task of deciding can be performed by the parties, but the shadow of a low cost neutral decision is an essential element of the system. After attempting a gradual narrowing of the range of possible outcomes, the facilitator could steer the process to an agreement to disagree on the remaining issues. His system would then lead the parties to choosing a decision-maker. If there is no agreement on this, the facilitator chooses the forum. The value of the stakes, the complexity of applying objective criteria to the distributive issues, the expectations about problems with enforcement, and other factors will determine the forum. This forum can consist of the facilitator herself as the lowest cost option, but also of another neutral person, a panel of neutrals, an expert, a group of peers, or any combination of these persons.

Because the problems, perceptions, interests, distributive issues, the possible objective criteria, and the range of acceptable outcomes are already defined, the procedure before the neutral(s) can be short and effective. A hearing where the panel can ask questions and the parties can clarify their points of view is likely to be sufficient. The facilitator can help the neutral(s) with getting information from the parties, and assist the parties to bring forward their points of view. For this third party intervention a fixed fee should be paid by the plaintiff, or by both parties if the defendant participates.

If, exceptionally, the panel finds that additional fact-finding is necessary and cost-efficient from the perspective of minimizing error and decision costs, it can decide this extra inquiry to take place. In order to keep the expected costs of neutral intervention low, an option is to require from the panel that it combines this interim decision on procedure with a preliminary decision on the distributive issues, based on the information that is available and the probabilities of different outcomes from the additional fact-finding. Another fixed fee for the additional fact-finding would be appropriate.

Making outcomes transparent (task 5) is done by the facilitator with the help of the formats in his toolbox. Stabilizing also entails his task to find ways to stimulate compliance. Depending on the context, social norms, and possible reputation effects, the facilitator may use a mechanism of gradually exposing the degree of non-cooperation by the defendant. A first step may be to disclose to a limited audience that the defendant has an unsolved dispute, followed by disclosing non-participation, and/or non-compliance with or third-party intervention.

Payment for the stabilization phase could be due in, say, six months after the decision has been made. This could be combined with an evaluation of the process by both parties, who could give their views on the quality of the process, the quality of the outcome, and the costs they spent. These evaluations can also be part of the monitoring system that is needed to ensure future clients that the facilitator is neutral and unbiased.

### *C. Discussion*

The sketch of a Microjustice Facilitator gives an example of how the best practices for each of the five essential dispute resolution tasks can be combined and integrated in an innovative dispute system. There are hundreds, possibly thousands ways to combine and link the best practices. Thus, there are a great many other possible dispute systems that can be put together from these components. Moreover, this article only contains a preliminary list of these best practices. Innovating dispute systems is a matter of improving, redesigning, testing, and evaluation of many different models. The framework of five essential dispute resolution tasks and their basic technologies can provide a basis for evaluation of existing dispute system, and for systematic innovation efforts. Best practices regarding each of the elements can guide these efforts, and new best practices can be added to the framework.

If this framework is applied to the model of the Microjustice Facilitator, we get a clear view of the problem areas of making this model work in practice. On many points there can be hesitation whether the system would work in the way intended. Will the neutral positioning of the facilitator attract sufficient clients, in particular in the face of competition of legal service providers who work for the plaintiff exclusively? Can the facilitator engage the defendant? How will the facilitator be accepted in the community, and especially by powerful defendants? Is it practicable to continue the dispute resolution process without the cooperation of the defendant? Can the facilitator define the distributive issues in such a way that the costs of neutral decision making remain limited? How will the neutral forum have to be organized? Will it be possible to find neutrals with the required qualities against reasonable costs? Is it possible to organize compliance in the way envisaged?

Besides the complexity of dispute resolution services themselves, these issues also make clear that dispute resolution services take place in a broader context. There is something like a market for justice, where different providers of services are active, from village elders, to courts and professional lawyers. This market has to be studied as well, as part of the innovation process.

#### **IV. Conclusion**

The goal of this article is to explore the production costs of justice, and in particular the methods for delivering access to a low cost system from which people can expect a fair resolution of their most common disputes. The model of a basic dispute system, with five tasks and the technologies to perform them, proved to be a good structure for classifying best practices, and investigating systematically how they complement each other.

None of the five core dispute resolution services seems prohibitively costly to produce if we look at the best practices available for each of these services. These elements of a dispute system can be provided by local labor and are indeed regularly provided within communities, including communities with limited resources. Delivering justice by people to their fellow citizens against affordable prices (microjustice), seems possible.

There are some areas where low cost delivery may be more problematic in practice, though. The best practices for letting disputants meet are available, but not yet built into an integrated model ready to be applied. This is certainly apparent if we compare them with the extensive models for communication and negotiation that the ADR (mediation) and ODR (online dispute resolution) communities have developed. Sharing rules, the objective criteria for distributive issues, can only be produced low cost if economies of scale can be reached. The ways to do this have yet to be uncovered. Low cost third party intervention seems to be possible, but there is not yet a generally accepted model for this available, which systematically integrates the best that conflict research, legal processes, and ADR have on offer. Stabilization through registrations of property rights and identities is another area where economies of scale are important. Registrations have strong network effects so that the initial investment is likely to be high.

What seems needed in these areas, is systematic innovation. Starting from the basis technologies, and from the existing best practices, an integrated effort is necessary to innovate dispute services. In co-development processes with users and dispute resolution providers, experiences must be collected and improvements defined. Testing and evaluation is necessary, of both the dispute resolution technology and the business models that form part of the system. The five element model of a dispute system used in this paper presents a framework for this.

Some types of disputes are more difficult to solve at low cost. Inducing perpetrators of severe crimes to participate, extensive fact-finding, providing outcomes for non-standard cases, legal representation, and formal sanctions are likely much more costly. But this does not seem to affect the core business of dispute systems, which is providing neutral

governance for long term relationships that must adapt to change. From there, systematic dispute system design efforts can be extended to other justice needs like consumer problems, and complaints about government services.

This paper focused on the production costs of facilitating the five core dispute resolution tasks, and found them not to be a fundamental problem, although there are still many ways in which existing best practices can be improved. If this is the conclusion, there may also be other reasons access to justice is lacking for so many people in so many situations. Economic theory points in the direction of high transaction costs, probably in light of market and government failure. These topics will be dealt with in another paper (Barendrecht 2009). Here, we already encountered some hints where high transaction costs and market failure might be located. Information regarding fair outcomes is often unavailable, which may have to do with incentives to produce and distribute such information, whereas economies of scale are important here. The costs of accessing a neutral (a court) can be quite high, although it seems possible to organize neutral intervention in a low cost manner. Strong complementarities exist, which is an often mentioned cause of market failure.

Providing access to justice is an immense challenge, because five types of dispute resolution services have to be delivered, to two clients who are in conflict, which almost by definition means they find cooperation difficult. Market circumstances, and the difficulties of performing the five tasks in combination, add to the complexity. Still there is reason to believe that access to justice does not have to be a luxury good; its major components can be delivered in a way that is affordable for people with limited resources.

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